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6 UNITED STATES DISTRICT COURT
7 WESTERN DISTRICT OF WASHINGTON
8 AT TACOMA

9 ATLANTIC CONSTRUCTION
10 FABRICS, INC., et al.,

11 Plaintiffs,

12 v.

13 METROCHEM, INC., et al.,

14 Defendants.

CASE NO. C03-5645BHS

ORDER GRANTING
DEFENDANTS' MOTION
FOR RECONSIDERATION
AND VACATING PREVIOUS
ORDER

15 This matter comes before the Court on Defendants' Motion for Reconsideration
16 (Dkt. 103). The Court has considered the pleadings filed in support of and in opposition
17 to the motion and the remainder of the file and hereby grants the motion for the reasons
18 stated herein.

19 On July 28, 2008, Defendants filed a Motion for Summary Judgment. Dkt. 87. On
20 September 5, 2008, the Court issued an order denying Defendants' motion as premature
21 because Defendants asked the Court to construe the claims of a patent before a formal
22 hearing on the scope of the patent claims had been held. Dkt. 101.

23 On September 9, 2008, Defendants filed a Motion for Reconsideration directing
24 the Court's attention to the claim interpretation order that was issued on September 21,
25 2004 (Dkt. 60). Dkt. 101. On September 12, 2008, the Court requested a response from
26 Plaintiffs and set a briefing schedule for Defendants' motion to reconsider. Dkt. 104. On
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ORDER


1 September 17, 2008, Plaintiffs responded. Dkt. 106. On September 19, 2008, Defendants
2 replied. Dkt. 107.

3 Plaintiffs argue that the Court did not commit error by failing to consider the
4 earlier claim construction order because that order did not construe terms that are relevant
5 to Defendants' motion for summary judgment. Dkt. 106. Plaintiffs, therefore, conclude
6 that the Court was correct when it denied Defendants' motion as premature. *Id.* While it
7 may be true that the Court will need to construe claim terms before reaching the merits of
8 Defendants' motion for summary judgment, the Court erred by basing its decision on an
9 incomplete view of the procedural history and law of the case.

10 Therefore, it is hereby

11 **ORDERED** that Defendants' Motion for Reconsideration (Dkt. 103) is
12 **GRANTED**. The Court's order denying Defendants' Motion for Summary Judgment
13 (Dkt. 102) is **VACATED**. An order on Defendants' summary judgment motion will be
14 issued forthwith.

15 DATED this 24th day of September, 2008.

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19 BENJAMIN H. SETTLE
20 United States District Judge
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